

IN THE U.S. PATENT AND TRADEMARK OFFICE

Application No.: 09/767,839
Filing Date: January 24, 2001
Applicant: Philip D. Mooney et al.
Group Art Unit: 2618
Examiner: T. X. Nguyen
Title: SYSTEM AND METHOD FOR SWITCHING
BETWEEN AUDIO SOURCES
Attorney Docket: 129250-001021/US

APPELLANTS' REPLY BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

October 4, 2007

In response to the Examiner's Answer dated August 22, 2007 the Appellants submit the following reply.

ARGUMENTS

Before proceeding, the Appellants again note that claims 1-17 and 19-48 were rejected under 35 U.S.C. §103(a) based on Anvekar and Wang. Of these, claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 are still pending. In the Examiner's Answer ("Answer"), the Examiner appears to take the following positions: (a) Wang does not state that a headset cannot be used, but, it just presents the disadvantages of using a headset; and (b) the Appellant cannot attack the Examiner's references individually (see page 14 of the Answer).

A. WANG CLEARLY TEACHES AWAY FROM THE USE OF A HEADSET

With all due respect to the Examiner, Wang clearly and explicitly teaches away from the use of a headset (referred to as "headphones" in Wang). Further, the use of headphones would destroy the principle of operation of Wang's "audio interface garment" because it is not possible to wear headphones or earphones as a garment and not possible to avoid the safety risks discussed in Wang related to headphones and earphones if such a garment includes headphones.

For example, Wang states:

"In order to obtain a hands-free system with regard to the audio output device, either headphones or earphones may be employed. Disadvantages, of using either headphones or earphones for personal listening result from the ears of the user being partially covered. Consequently, headphones and earphones act to block sound waves produced within the physical environment of the user. Hence, potential safety risks result if the user is performing other tasks while wearing wearing a headphone or an earphone, such as driving a car, crossing a street, or operating a machine. Further, wearing a headphone or an earphone for an extended duration of time grows uncomfortable

for many people.”

(Wang, column 1, lines 43-55).

To overcome the disadvantages of headphones and earphones Wang discloses the use of an audio interface garment (e.g., a shirt as shown in Figure 2 of Wang).

According to Wang, the garment includes speakers that are placed within it as desired to meet the audio, comfort and concealment requirements of a user wearing the garment. Further, “[the] important feature of these speakers is that they create a 3-D audio space for the wearer in which signals can be mixed to vary the perceived location of these signals without blocking the wearer’s natural auditory environment” (Wang, column 6, lines 8-15).

In sum, it is clear that Wang does not disclose or suggest the use of a headphone/headset as part of its garment.

B. THE CLAIMS ARE PATENTABLE OVER THE COMBINATION OF ANVEKAR AND WANG

To clarify Appellants position, neither Anvekar nor Wang, taken separately or in combination, discloses or suggests both: (a) the selection of an audio signal that has been overlaid on another audio signal, and (b) the output of such a signal to a headset.

Conclusion:

Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777

APPELLANTS' REPLY BRIEF ON APPEAL

U.S. Application No.: 09/767,839

Atty. Docket: 129250-001021/US

for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

Capitol Patent & Trademark Law Firm, PLLC

By: //John E. Curtin//

John E. Curtin, Reg. No. 37,602

P.O. Box 1995

Vienna, VA 22183

(703)266-3330